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SUPREME COURT OF THE UNITED STATES.

No. 66.

GEORGE RUNYAN, PLAINTIFF IN ERROR,

VERSUS

JOHN G. FOSTER, AND OTHERS.

ERROR TO THE CIRCUIT COURT U. S., FOR PENNSYLVANIA, (E. D.)

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UNITED STATES, *Sct.*

The President of the United States to the Judges of the Circuit Court of the United States, holden in and for the Eastern District of Pennsylvania, in the third circuit, Greeting:

Because, that in the record and process, and also, in the rendering of judgment in a suit before you or some of you, between Richard Smith, a citizen of the State of New York, lessee of John G. Aster, and Thomas R. Mercein, who survive John Hone, a citizen of the State of New York, plaintiff, and George Runyan, a citizen of the State of Pennsylvania, defendant. In a plea of tresspass and ejectment, a manifest error has intervened to the great damage of the said George Runyan, as in his complaint has been stated; and as it is just and proper, that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf.

You are hereby commanded, that if judgement thereof be given, then render your seal, you do distinctly and openly send the record and process in the suit aforesaid, with all things concerning them, and this writ, so that you have the same before the Chief Justice, and the Associate Justices of the Supreme Court of the United States, on the second Monday of January next, at the City of Washington, being the seat of National Government, that the record and process aforesaid, being inspected, they may cause to be done, thereupon, what of right ought to be done.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, at Washington aforesaid, this eight day of January, in the year of our Lord one thousand eight hundred and thirty-eight, and in the sixty-second year of the Independence of the said United States.

Allowed by JOS. HOPKINSON. FRA. HOPKINSON, *Clk. Circt. Ct.*

Pleas before the honorable the Judges of the Circuit Court of the United States, in and for the Eastern District of Pennsylvania, in the third Circuit at Philadelphia, of October sessions, A. D. 1837.

It is thus contained.

George Runyan, a citizen of the State of Pennsylvania, was attached to answer Richard Smith, a citizen of the State of New York, of a plea, whereof he, the said George Runyan, with force and arms, &c., entered into one messuage, one barn, one stable, six hundred acres of meadow land, six hundred acres of woodland, six hundred acres of arable land, and six hundred acres of pasture land,

with the appurtenances, of the value of twenty thousand dollars, situate in Norwegian Township, Schuylkill county, in the district aforesaid, which John G. Coster, and Thomas K. Mercein, who survived John Hone, citizens of the State of New York, demised to the said Richard Smith for a term which is not yet expired, and ejected him from his said farm, and other wrongs to him did, to the great damage of said Richard, and against the peace of the United States, &c. And whereupon the said Richard Smith, by Thomas A. Budd, his attorney complains that, whereas the said John G. Coster and Thomas K. Mercein, on the first day of June, in the year of our Lord one thousand eight hundred and thirty-seven, at the district aforesaid, had demised to the said Richard, the tenements aforesaid, with the appurtenances, to have and to hold the same with the appurtenances to the said Richard, and his assigns, from the nineteenth day of May, then last past, to the end and term of twenty years, thence next ensuing, and fully to be completed and ended; by virtue of which said demise, the said Richard into the tenements and appurtenances entered, and was thereof possessed, and the said Richard being so possessed thereof, the said George, Runyan to wit, on the tenth day of June, in the year aforesaid, with force and arms, &c., at the district aforesaid, entered into the said tenements with the appurtenances, which the said John G. Coster and Thomas K. Mercein, had demised to the said Richard in form aforesaid, for the term aforesaid, which is not yet expired, and ejected the said Richard out of his said farm, and other wrongs to him did, to the great damage of the said Richard, and against the peace of the United States; whereby the said Richard saith that he is injured and damaged to the value of twenty thousand dollars, and thereupon he brings suit, &c.

And thereupon the said George Runyan, by R. J. Arundel, Esq. his attorney, comes and defends the force and injury when, &c., and says that he is in nowise guilty of the trespass and ejectment aforesaid, as the said Richard Smith above complains against him, and thereof, he puts himself upon the country; and the said Richard Smith does the like. Therefore let a jury thereupon come before the judges aforesaid, at Philadelphia aforesaid, on the eleventh day of April next, by whom, &c., and who, neither, &c., to recognize, &c., because as well, &c., the same day is given to the parties aforesaid, &c., then and there, &c., on which said eleventh day of April, in the year of our Lord ond thousand eight hundred and thirty-eight, come the parties aforesaid, by their attornies aforesaid, and further day is given to the parties aforesaid, until the eleventh day of October then next. Therefore as before, let a jury come on the said eleventh day of October by whom, &c., and who neither, &c., to recognize, &c., because as well, &c. the same day is given to the parties aforesaid, &c. then and there, &c., on which said eleventh day of October, in the year of our Lord one thousand eight hundred and thirty-eight, come the parties aforesaid by their attornies aforesaid, &c., then and there, &c., and now to wit, on the twenty-fourth day of October in the year last aforesaid, a jury being called, come to wit: David Boyd, Daniel Moore, Thomas Pratt, Elhanan W. Keyser, Henry F. Smith, Isaac Shunk, Benjamin Martin, Thomas Wallace, Thomas D. Grover,

Jonathan Miller, William B. Mott, and Henry Leech, who being duly empannelled, returned, elected, tried and sworn, or affirmed to speak the truth, of the matter within contained. And on trial of that issue, to maintain the same on his part; the said Richard Smith gave in evidence a warrant from the Commonwealth of Pennsylvania, to Benjamin Pott, as follows in hæc verba.

THE COMMONWEALTH OF PENNSYLVANIA, *ss.*

Whereas, Benjamin Pott, of the Township of Norwegian, in the County of Schuylkill, hath applied for three hundred acres of land being unimproved, adjoining John Shull, George Rahnblews' improvement, and land supposed to be vacant, situate in the Township of Norwigian, in the county of Schuylkill, for which he hath paid into the office of the State Treasurer at the [SEAL.] rate of £10 per hundred acres, interest thereon from the date hereof, to be paid agreeably to the several acts of Assembly in such case made and provided. These are therefore to authorize and require you to survey, or cause to be surveyed, unto the said Benjamin Pott, the quantity of acres by him applied for at the place aforesaid, if not already surveyed or appropriated, and to make return thereof into the said land office, for which this shall be your warrant.

In witness whereof, Joshua Dickerson, Secretary of the land office, hath hereunto set his hand and affixed the seal of the said office, the twenty-third day of December, A. D. 1824.

JOSHUA DICKERSON,
Sec'y Ld. Office.

To GABRIEL HEISTER,
Surveyor General.

To Gabriel Hester,
Surveyor General.

In testimony that the above is a copy of the original filed in the surveyor general's office.

I, have hereunto set my hand and affixed the seal of [SEAL.] the said office at Harrisburg, the eighteenth day of April, 1828.

For GAB. HEISTER, Esqr. *S. G.*
JAS. EYSLER.

And a survey of the said lands containing 213 acres 15 perches, and allowance. Accepted 11th August, 1835, embracing the land in controversey, together with the following deed from Benjamin Pott and wife in haec verba.

This indenture, made the seventeenth day of March, in the year of our Lord one thousand eight hundred and thirty, between Benjamin Pott, of the Borough of Pottsville, in Norwegian township, in the county of Schuylkill, iron-master, and Christina, his wife, of the first part, and John G. Coster, John Hone, Moses Jaques, and Thomas K. Mercein, of the city of New York, trustees for the several intents hereinafter mentioned, of the second part. Witnesseth that the said Benjamin Pott, and Christina, his wife, for and in consideration of the sum of one hundred dollars, lawful money of the United States, to them in hand well and truly paid by the said party of the second part, their heirs, executors and administrators, by these presents, have granted, bargained, sold, aliened, enfeoffed, released and confirmed, and by these presents, do grant, bargain, sell, alien, enfeoff, release and confirm, unto the said party of the second part, and to their heirs and assigns, as trustees as aforesaid. All that certain tract or parcel of land situate in Norwegian township, in the county of Schuylkill. Beginning at a dogwood tree, in a line of land late of John Schall, thence by that land south forty-two degrees, east twenty perches, to a post corner, south forty-eight degrees, west thirty-eight perches, to a spruce corner, south forty-two degrees, east one hundred and forty-one perches, crossing a small stream of water to a stone, and south thirty-nine degrees, east twenty-three perches to a stone corner, in a line of land of the New York and Schuylkill Coal Company; thence by that land south sixty-five degrees, west two hundred and fourteen perches to a stone corner, thence by land surveyed to Thomas Sillyman, north thirty degrees, west one hundred and seventy-seven perches to a post corner, thence by land called Blew's improvement, now the property of Creysons, north sixty-two degrees east, two hundred and thirteen perches to the place of beginning, containing two hundred and thirteen acres fifteen perches, and allowance, be the same more or less, (it being the same tract of land, which was surveyed on the thirteenth day of May, one thousand eight hundred and twenty-five, in pursuance of a warrant granted to the said Benjamin Pott, bearing date the twenty-third day of December, one thousand eight hundred and twenty-four,) together, also with all and singular, the houses, out houses, barns, stables, gardens, orchards, meadows, fields, fences, ways, woods, waters, water-courses, rights, liberties, privileges, hereditaments, and appurtenances whatsoever thereunto belonging, or in any wise appertaining, and the reversions, and remainder, rents, issues, and profits thereof, and also all the estate, right, title, interest, use, trust, property, possession, claim and demand, whatsoever of them, the said party of the first part in law or equity, or otherwise howsoever of, in, to, or out of the same, to have and to hold the said tract of land, hereditaments, and premises hereby granted and released, or mentioned, or intended so to be, with the appurtenances, unto the said party of the second part, their heirs and assigns; to the only proper use and behoof of them, the said party of the second part, their heirs and assigns forever, to such uses, and upon such trusts as are hereinafter mentioned, that is to say, to have, take, and

receive the premises hereinbefore described, and the rents, issues and profits thereof, to the sole use and behoof of the several individual stockholders, of the corporation, known under the name, style and title, of the New York and Schuylkill Coal Company, as well such persons as are now stockholders of the said company, as all such persons as hereafter may become such stockholders in proportion to their respective interests therein, upon trust; nevertheless, that the said trustees, or a majority of them, or the survivor of them, whenever requested to do in writing, under the corporate seal of said company, duly affixed by the order of the said company, shall convey the said premises hereby granted in such manner, and to such persons a majority of the stockholders or directors of the said company, may in virtue of their charter prescribe, provided always, that neither of the said trustees nor the heirs. executors or administrators of either of them, shall be answerable for the acts of the other, and that they shall be reimbursed out of the said trust, estate, all such costs, charges and expenses, as they shall sustain or expend in the performance of the said trust; and the said Benjamin Pott for himself, his heirs, executors and administrators, doth covenant, promise, grant and agree, to and with the said John G. Coster, John Hone, Moses Jaques, and Thomas R. Mercein, their heirs and assigns, by these presents, that he, the said Benjamin Pott, and his heirs the said above mentioned and described tract of land, hereditaments, and premises, hereby granted and released, or mentioned, or intended so to be, with the apppurtenances, unto the said John G. Coster, John Hone, Moses Jaques, and Thomas R. Mercein, their heirs and assigns, against him, the said Benjamin Pott and his heirs, and against all and every persons and persons whomsoever, lawful claiming or to claim the same, or any part or parcel thereof, by, from or under him, them, or any of them, shall and will warrant, and forever defend by these presents.

In witness whereof, the said party of the first part, have [SEAL.] hereunto, interchangeably, set their hands and seals, dated the day and year, first above written.

Signed.

BENJAMIN POTT,
CHRISTIANA POTT.

Recorded in the office for recording of deeds in and for Schuylkill county, in deed book No. 9, page 91, the tenth day of April, A. D., 1830.

Together with a deed from Moses Jaques, as follows in hæc verba.

This indenture, made the twenty-fifth day of July, in the year of our Lond one thousand eight hundred and thirty-seven, between Moses Jaques, of the city of New York, in the State of New York, gentleman, trustee of the land, tenements, and hereditaments hereinafter described, for the stock holders of the New York and Schuylkill Coal Company of the first part, and John G. Coster and Thomas K. Mercien of the same city, gentlemen of the second part. Witnesseth

that (by the order of the directors of the said company, passed at a legal meeting held on the day of the date of these presents, and signified to the said parties of the first part, in writing under the corporate seal of the said company duly attested and affixed, by order of the said directors for the said party, of the first part, to convey the lands, tenements, and hereditaments hereinafter described, to the said parties of the second part on the trusts hereafter mentioned,) the said Moses Jaques, for and in consideration of the sum of ten dollars, lawful money of the United States, to him in hand paid by the said John G. Caster and Thomas K. Mercien, the recipt whereof is hereby acknowledged, hath granted, bargained and sold, aliened, remised, released, conveyed, transferred and set over, and by these presents do grant, bargain, and sell, alien, remise, release, convey, transfer and set over unto the said John G. Coster and Thomas K. Mercein, and to their heirs and assigns forever, all that certain tract or parcel of land situate in Norwegean township, in the county of Schuylkill, begining at a dogwood in a line of land, late of John Schall, thence by that land, south forty-two degrees, east twenty perches to a post corner, south forty-eight degrees, west thirty-eight perches to a spruce corner, south forty-two degrees. east one hundred and forty-one perches, crossing a small stream of water to a stone, and south thirty-nine degrees east, twenty-three perches to a stone corner, in a line of land of the New York and Schuylkill Coal Company, thence by that land south sixty-five degrees, west two hundred and fourteen perches to a stone corner, thence by land surveyed to Thomas Sillyman, north thirty degrees west, one hundred and seventy-seven perches, to a post corner, thence by land called Blew's improvement, now the property of Cressons, north sixty-two degrees, east two hundred and thirteen perches, to the place of beginning, containing two hundred and thirteen acres fifteen perches, and allowance, be the same more or less, (it being the same tract of land which was surveyed on the thirteenth day of May, one thousand eight hundred and thirty-five, in pursuance of a warrant granted to Benjamin Pott, bearing date the twenty-third day of December, one thousand eight hundred and twenty-four, and was conveyed by the said Benjamin Pott, to the said parties of the first and second part by deed, dated the seventeenth day of March, in the year of our Lord one thousand eight hundred and thirty, recorded in the office for recording of deeds for the county of Schuylkill, in deed book No. 9, page 91, the 10th day of April, A. D. 1830,) together, also, with all and singular, the housess out-houses, barns, stables, gardens, orchards, meadows, fields, fences, ways, woods, waters, water-courses, rights, liberties, privileges, hereditaments and appurtenances, whatsoever thereunto belonging, or in any wise appertaining, and the reversion and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, use, trust, property, possession, claim and demand whatsoever, of him the said party of the first part in law or equity or otherwise, howsoever, of, in, or to, or out of the same, to have and to hold the said tract of land, hereditaments and premises herby granted and released or mentioned, or intended so to be, with the appurtenances, unto the said parties of the

second part, their heirs and assigns forever, to such uses and upon such trusts as are hereinafter mentioned, that is to say, to have, take and receive the premises hereinbefore described, and the rents, issues and profits thereof, to the sole use and *and* behoof of the several individual stockholders of the corporation, known under the name, style and title of the New York and Schuylkill Coal Company, as well such persons as are now stockholders of the said company, as all such persons as hereafter may become such stockholders, in proportion to their respective interests therein, upon trust, nevertheless, that the said trustees or the survivor of them, whenever requested to do in writing under the corporate seal of the said company duly affixed by the order of the said company, shall convey the said premises hereby granted in such manner and to such persons as a majority of the stockholders or directors of the said company may in virtue of their charter prescribe; provided, always, that neither of the said trustees, nor the heirs, executors or administrators of either of them, shall be answerable for the acts of the other, and that they shall be reimbursed out of the said trust-estate, all such costs, charges and expenses as they shall sustain or expend in the performance of the said trust, and the said Moses Jaques, for himself, his heirs, executors and administrators, doth covenant, promise, grant and agree to, and with he said John G. Coster and Thomas R. Mercein, their heirs and assigns by these presents that he, the said party of the first part, hath not done or committed, or willingly suffered to be done or committed, any act, matter or thing whatsoever, whereby the premises aforesaid, or any part thereof is, or shall or may be impeached, charged or incumbered in title, charge, or estate, or otherwise howsoever.

In witness whereof, the said party to these presents has [SEAL.] hereunto set his hand and seal the day and year above written.

Signed,

MOSES JAQUES.

The plaintiffs, also proved that George Runyan, the defendant, was in possession of the land claimed at the time this suit was brought, and also, that John Hone, the before mentioned person was dead before the commencement of this action. The defendant, without offering any evidence, insisted and prayed the court to charge the jury that, upon the plaintiff's evidence he is not entitled to recover. But the court on the contrary directed the jury that the plaintiff is entitled to recover. Whereupon the defendant tendered this *bill of exceptions*.

HENRY BALDWIN, [SEAL.]
JOSEPH HOPKINSON. [SEAL.]

Whereupon the jurors aforesaid, upon their oaths and affirmations aforesaid, respectfully do say that the said George Runyan is guilty of the trespass and ejectment aforesaid, in manner and form as the said Richard Smith above complained against him, and assess the damages of the said Richard Smith, by reason of that trespass and eject-